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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,565	11/15/2001	Anja Drucks	100718- / Beiersdorf 749-	2712

7590 12/31/2003

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EXAMINER

KIM, JENNIFER M

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 12/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/001,565

Applicant(s)

DRUCKS ET AL.

Examiner

Jennifer Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 . 6) ☐ Other: _____

DETAILED ACTION

The amendment filed August 14, 2003 have been received and entered into the application.

Applicant's election with traverse of claim 4 in Paper No. 10 is acknowledged. The traversal is on the ground(s) that the claims are directed to a wipe and that no reasons were give as to why claim 1 was deemed to be generic. This is not persuasive because the claims are drawn to not only a wipe itself but to a wipe consisting of solutions of oils or alcohols. Further the claim 1 is generic since it is broadest claim comprising any of these solutions. It is noted that Applicants have not supported any reason or any data showing oils or alcohols are not patentably distinct. Therefore the species election is deemed proper and therefore, made FINAL.

The claims have been examined only to the obviousness of administering the elected wipe comprising oil base solution.

Claim 6 is withdrawn from consideration since this is non-elected species.

Claim Objections

Claims 1 and 4 are objected to because of the following informalities: There is typographical error on the term "water-jet-**consolidated**". Appropriate correction is required.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Simon (U.S. Patent No. 6,245,322 B1) in view of Brennan et al. (U.S. Patent No. 6,361,784 B1).

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Simon teaches an emulsion composition comprising silicone oils and oils (lipophilic substance) set forth in claim 3, and auxiliaries or additives and or active ingredients set forth in claim 7 including fragrances, coloring materials, and active agents with viscosity set forth in claim 1. (abstract, column 2, lines 60-61, column 5, lines 30-65). Simon teaches that the composition can be impregnated in a fabric (woven or nonwoven) consisting cleansing wipes intended for dermatological use. (column 5, lines 27-32, column 6, lines 49-56).

Simon does not expressly teach the specific wipe of "water-jet-consolidated and/or water-jet-impressed" set forth in claim 1 and the amounts of ingredients set forth in claim 3.

Brennan et al. teach the non-woven water-jets wipes pre-moistened with oil-in-water emulsion comprising Applicants' silicones and oils set forth in claim 3 and dermatological additives or auxiliaries set forth in claim 7.

It would have been obvious to one of ordinary skill in the art to modify the teachings of Simon to impregnated the emulsion composition of Simon in Brennan et al's wipe because Simon teaches the emulsion composition can be impregnated in a fabric including nonwoven and because Brenan et al. teach that Brenan et al's wipe can be pre-moisten with the emulsion constitute with same agents as Simon's emulsion. One would have been motivated to make such a modification since the references are drawn to same technical feature (dermatological wipe) constituted with same emulsions for the same utility (dermatological use). The amounts of ingredients to be used, the pharmaceutical emulsion forms set forth in claims 4 and 9, e.g., w/O, O/W, W/O/W or

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O/W/O. are all deemed obvious since they are all within the knowledge of the skilled compounding emulsions and represent conventional formulations.

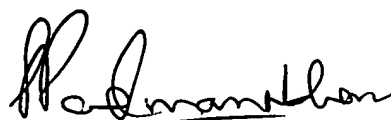
For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 703-308-2232. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 703-305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



Sreenivasan Padmanabhan
Supervisory Examiner
Art Unit 1617

12/29/03

Jmk
December 24, 2003